

RECORDATION NO. 9882 Filed 1425

CRAVATH, SWAINE & MOORE

DEC 4 1978-11 50 AM

ONE CHASE MANHATTAN PLAZA

INTERSTATE COMMERCE COMMISSION

MAURICE T. MOORE  
BRUCE BROMLEY  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DE KOSMIAN  
ALLEN F. MAULSBY  
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HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
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ROBERT ROSENMAN

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ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
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CHRISTINE BESHAR  
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PAUL M. DODYK  
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THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON

NEW YORK, N.Y. 10005

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RCA 233663  
WUD 125547  
WUI 620976

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9882-15 Filed 1425

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INTERSTATE COMMERCE COMMISSION

COUNSEL  
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RECORDATION NO. 9882-16 Filed 1425

DEC 4 1978-11 50 AM

INTERSTATE COMMERCE COMMISSION

33 THROSMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE 01-606-1421  
TELEX: 8814901

CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E.C.2

December 4, 1978

Allied Chemical Corporation  
Lease Financing

Dated as of October 15, 1978  
9-3/8 Conditional Sale Indebtedness  
Due 1998

Dear Sir:

Pursuant to 49 U.S.C. §11303(a) (formerly Section 20c of the Interstate Commerce Act), I enclose herewith on behalf of Allied Chemical Corporation, for filing and recordation, counterparts of the following:

1(a) Conditional Sale Agreement dated as of October 15, 1978, between The Connecticut Bank and Trust Company and each of ACF Industries, Incorporated and Pullman Incorporated (Pullman Standard Division);

(b) Agreement and Assignment dated as of October 15, 1978, between Metropolitan Life Insurance Company and each of ACF Industries, Incorporated and Pullman Incorporated (Pullman Standard Division);

2(a) Lease of Railroad Equipment dated as of October 15, 1978, between Allied Chemical Corporation and The Connecticut Bank and Trust Company;

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DEC 4 11 43 AM '78

RECEIVED

Counters to - Large Jones

8-333A 40

Date DEC 4 1978

Fee \$ 10.00

DC Washington, D.C.

(b) Assignment of Lease and Agreement dated as of October 15, 1978, between The Connecticut Bank and Trust Company and Metropolitan Life Insurance Company.

The addresses to the parties of the aforementioned agreements are:

Lessee:

Allied Chemical Corporation,  
P. O. Box 1219 R,  
Morristown, New Jersey 07960

Vendee-Lessor:

The Connecticut Bank and Trust Company,  
One Constitution Plaza,  
Hartford, Connecticut 06115

Vendor-Assignee:

Metropolitan Life Insurance Company,  
One Madison Avenue,  
New York, New York 10010

Builder-Vendor:

ACF Industries, Incorporated,  
750 Third Avenue,  
New York, New York 10017

Pullman Incorporated,  
(Pullman Standard Division),  
200 South Michigan Avenue,  
Chicago, Illinois 60604

The equipment covered by the aforementioned agreements consists of 600 100-ton covered hoppers with gravity outlet gates, trough hatches; 50 100-ton covered hoppers with gravity outlet gates, round hatches; and 64 100-ton covered hoppers with pneumatic outlet gates, round hatches, bearing the road numbers of the lessee ACTX 944000-944599; ACTX 944800-944849 and ACTX 945611-945674 and also bearing the legend "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, as Amended".

Enclosed is our check for \$100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

*Steven M. Berzin*

Steven M. Berzin  
As Agent for  
Allied Chemical Corporation

H. G. Homme, Jr., Acting Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

BY HAND  
Encls.  
79A

DEC 4 1978 -11 50 AM

INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1978

among

ACF INDUSTRIES, INCORPORATED,

PULLMAN INCORPORATED  
(Pullman Standard Division),

and

METROPOLITAN LIFE INSURANCE COMPANY

---

AGREEMENT AND ASSIGNMENT dated as of October 15, 1978, among ACF INDUSTRIES, INCORPORATED, PULLMAN INCORPORATED (Pullman Standard Division) (the "Builders") and METROPOLITAN LIFE INSURANCE COMPANY (the "Assignee").

WHEREAS the Builders and The Connecticut Bank and Trust Company, as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof with Eighth HFC Leasing Corporation (the "Beneficiary") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA (hereinafter called the "Equipment", and the Equipment in respect of a Builder being hereinafter sometimes called "its Equipment"); and

WHEREAS the Vendee and Allied Chemical Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in subparagraph (a) of the third

paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and, except as aforesaid, in and to any and all amounts which may be or become due or owing to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of its Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this Section 1, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver its Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of such Builder to the Vendee with respect to its Equipment shall be and remain enforceable by the Vendee against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA

set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the rights of the Lessee under the Lease and the rights of the Assignee hereunder; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. Neither Builder will deliver any unit of its Equipment to the Vendee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment (as defined in the Lease) have been filed in accordance with 49 U.S.C. § 11303 (each Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has been made).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, the CSA Indebtedness (as defined in the CSA) or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA and § 1 of the Lease, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of

the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by either Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay or cause to be paid to the appropriate Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in installments minus that portion of the Lining Costs (as defined in the Participation Agreement dated as of the date hereof [the "Participation Agreement"] among the Lessee, the Beneficiary, HFC Leasing Inc., the Vendee and the Assignee), if any, in respect of such units, to be reimbursed by the Assignee to the Vendee on such Closing Date pursuant to the second paragraph of Paragraph 8 of the Participation Agreement, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel:



(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature other than these created by the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice for such units accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made or caused to be made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment or cause payment to be made for any of the Equipment assigned hereunder is hereby expressly conditioned upon the

satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment or cause such payment to be made, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of such Builder's Equipment with respect to which payment has not been made or caused to be made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment, any such subsequent assignee shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as such Builder is concerned, a legal and valid agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA.

SECTION 7. This Assignment shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by

*PC Hall*

[Corporate Seal]

SECRETARY

Attest:

*M. Montgomery*  
 ASSISTANT SECRETARY

PULLMAN INCORPORATED (Pullman  
 Standard Division),

by

[Corporate Seal]

Vice President-Freight Unit

Attest:

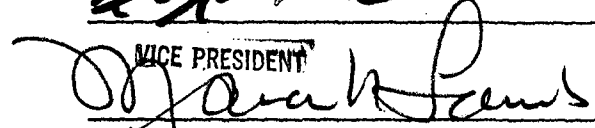
Assistant Secretary

METROPOLITAN LIFE INSURANCE  
COMPANY,

by



VICE PRESIDENT



Assistant General Counsel

[Corporate Seal]

Attest:

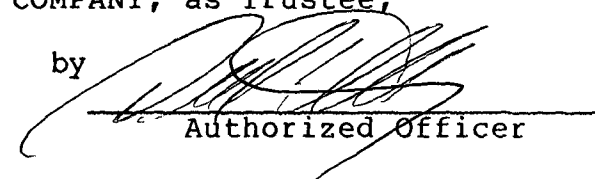


Assistant Secretary

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of October 15, 1978.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by



Authorized Officer

STATE OF NEW YORK, )  
 ) ss.:  
 COUNTY OF NEW YORK, )

On this *1<sup>st</sup>* day of *December* 1978, before me personally appeared *E.C. Hall*, to me personally known, who being by me duly sworn, says that he is a *Secretary* of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

My Commission expires

*Margaret Guido*  
 Notary Public  
 MARGARET GUIDO  
 Notary Public, State of New York  
 No. 24-4656270  
 Qualified in Kings County  
 Certificate Filed in New York County  
 Commission Expires March 30, 1979

STATE OF , )  
 ) ss.:  
 COUNTY OF , )

On this       day of       1978, before me personally appeared       , to me personally known, who being by me duly sworn, says that he is a Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this *18<sup>th</sup>* day of *December* 1978, before me personally appeared *Richard H. Banker*, to me personally known, who being by me duly sworn, say that he is a *Vice President* of METROPOLITAN LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said banking corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Margaret Guido*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires

MARGARET GUIDO  
Notary Public, State of New York  
No. 24-4656270  
Qualified in Kings County  
Certificate Filed in New York County  
Commission Expires March 30, 1979

---

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1978

among

ACF INDUSTRIES, INCORPORATED,

PULLMAN INCORPORATED  
(Pullman Standard Division),

and

METROPOLITAN LIFE INSURANCE COMPANY

---

AGREEMENT AND ASSIGNMENT dated as of October 15, 1978, among ACF INDUSTRIES, INCORPORATED, PULLMAN INCORPORATED (Pullman Standard Division) (the "Builders") and METROPOLITAN LIFE INSURANCE COMPANY (the "Assignee").

WHEREAS the Builders and The Connecticut Bank and Trust Company, as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof with Eighth HFC Leasing Corporation (the "Beneficiary") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the CSA (hereinafter called the "Equipment", and the Equipment in respect of a Builder being hereinafter sometimes called "its Equipment"); and

WHEREAS the Vendee and Allied Chemical Corporation (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in subparagraph (a) of the third



paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and, except as aforesaid, in and to any and all amounts which may be or become due or owing to such Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in the CSA) of its Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this Section 1, all such Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver its Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 13 of the CSA or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the CSA, all obligations of such Builder to the Vendee with respect to its Equipment shall be and remain enforceable by the Vendee against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Vendee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA

set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the CSA, the rights of the Lessee under the Lease and the rights of the Assignee hereunder; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Vendee thereunder. Neither Builder will deliver any unit of its Equipment to the Vendee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment (as defined in the Lease) have been filed in accordance with 49 U.S.C. § 11303 (each Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing has been made).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, the CSA Indebtedness (as defined in the CSA) or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the CSA and § 1 of the Lease, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of

the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by either Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay or cause to be paid to the appropriate Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in installments minus that portion of the Lining Costs (as defined in the Participation Agreement dated as of the date hereof [the "Participation Agreement"] among the Lessee, the Beneficiary, HFC Leasing Inc., the Vendee and the Assignee), if any, in respect of such units, to be reimbursed by the Assignee to the Vendee on such Closing Date pursuant to the second paragraph of Paragraph 8 of the Participation Agreement, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the CSA, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature other than these created by the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to such units as contemplated by Article 3 of the CSA and § 2 of the Lease;

(c) an invoice for such units accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the CSA, the rights of the Lessee under the Lease and the rights of the Assignee under this Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made or caused to be made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment or cause payment to be made for any of the Equipment assigned hereunder is hereby expressly conditioned upon the

satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the CSA. In the event that the Assignee shall not make any such payment or cause such payment to be made, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of such Builder's Equipment with respect to which payment has not been made or caused to be made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA. In the event of any such assignment, any such subsequent assignee shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the CSA is, insofar as such Builder is concerned, a legal and valid agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA.

SECTION 7. This Assignment shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

PULLMAN INCORPORATED (Pullman  
Standard Division),

by \_\_\_\_\_

[Corporate Seal]

*Hugh W. Oster*  
Vice President-Freight Unit

Attest:

*Margaret M. Keenan*  
Assistant Secretary

METROPOLITAN LIFE INSURANCE  
COMPANY,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of October 15, 1978.

THE CONNECTICUT BANK AND TRUST  
COMPANY, as Trustee,

by

\_\_\_\_\_  
Authorized Officer

STATE OF NEW YORK, )  
 ) ss.:  
 COUNTY OF NEW YORK, )

On this            day of            1978, before  
 me personally appeared            , to me  
 personally known, who being by me duly sworn, says that he is  
 a            of ACF INDUSTRIES, INCORPORATED, that one of  
 the seals affixed to the foregoing instrument is the corporate  
 seal of said corporation, that said instrument was signed and  
 sealed on behalf of said corporation by authority of its  
 Board of Directors, and he acknowledged that the execution of  
 the foregoing instrument was the free act and deed of said  
 corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires

STATE OF *Illinois* , )  
 ) ss.:  
 COUNTY OF *Cook* , )

On this *2<sup>ND</sup>* day of *December* 1978, before  
 me personally appeared *Hugh W. Foster* , to me  
 personally known, who being by me duly sworn, says that he  
 is a Vice President-Freight Unit of PULLMAN INCORPORATED  
 (Pullman Standard Division), that one of the seals affixed to  
 the foregoing instrument is the corporate seal of said  
 corporation, that said instrument was signed and sealed on  
 behalf of said corporation by authority of its Board of  
 Directors, and he acknowledged that the execution of the  
 foregoing instrument was the free act and deed of said  
 corporation.

*David R. Wood*  
 \_\_\_\_\_  
 Notary Public

[Notarial Seal]

My Commission expires *August 24, 1981*



STATE OF NEW YORK, )  
 ) ss.:  
COUNTY OF NEW YORK, )

On this                      day of                      1978, before me personally appeared                      , to me personally known, who being by me duly sworn, say that he is a                      of METROPOLITAN LIFE INSURANCE COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said banking corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires